

REMARKS

In the Office Action, the Examiner requires selection of one of three species. Claims 1-81 and 89-93 were elected in response to a prior restriction requirement. The Applicant is now required to select between three species: Species I including claims 2-5, 44 and 47; Species II including claims 6-11 and 48 and Species III including claim 49. Applicant respectfully traverses the requirements. Applicant has added new claims 106-120. Upon entry of this amendment, claims 1-81, 89-93 and 106-120 will be pending in the Office Action while claims 82-88 and 94-105 are withdrawn.

Brief Summary of Telephone Interview

Applicants thank the Examiner for the courtesies extended during the telephone call of March 23, 2006. Applicant's counsel expressed the opinion that the division between species made by the Examiner was arbitrary and appeared to mischaracterize certain aspects of the invention. The Examiner initially agreed to reassess whether 18 species are present in the Application. However, after an initial consolidation, the Examiner stated that the remaining species left too many claims for examination and proceeded to divide the claims into new species. Applicant's counsel declined to select from among the new species and requested that the Examiner review the species selection requirement and issue a new Office Action to permit Applicant's review.

Restriction Requirement and Election

Applicant provisionally selects Species I claims (including claims 2-5, 44 and 47) for prosecution on the merits. However, Applicant traverses the species selection requirement and submits that the requirement is arbitrary and unwarranted.

In the restriction requirement, the Examiner asserts that claims 1-81 and 89-93 belong to class 381, subclass 71.14. In class 381, subclass 71.14 is indented under subclass 71.8, and subclass 71.8 is directed to "[s]ubject matter, not elsewhere classifiable, comprising a noise cancellation system *where audible noise is at least partially eliminated by generating and acoustically emitting an out-of-phase replica of an offending sound.*" None of the elected claims in the present application require the generation of an out-of-phase replica of an offending sound. Applicant directs the Examiner's attention to class 381, subclass 94.1 as potentially offering a more appropriate classification of the subject matter. Applicant respectfully submits that, having incorrectly classified the claimed inventions, the identification of species of the claims is necessarily arbitrary. Therefore, Applicant requests withdrawal of the species selection requirement.

New Claims

Applicant requests entry of new claims 106-120. Each of claims 106-111 ultimately depend from claim 2 and are based on previously submitted claims 6-11, respectively. Each of claims 112-117 ultimately depend from claim 3 and are based on previously submitted claims 6-11, respectively. Claim 118 depends from claim 4. Claims 119 and 120 depend from claim 47 and are based on previously submitted claims 48 and 49, respectively. The new claims add no new subject matter to the Application and are fully supported in the written description and drawings.

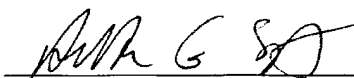
CONCLUSION

All objections and rejections have been addressed and prompt examination on the merits is earnestly solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is requested to contact the undersigned at the telephone number listed below.

Please charge any fees associated with the submission of this paper to Deposit Account Number 033975. The Commissioner for Patents is also authorized to credit any over payments to the above-referenced Deposit Account.

Respectfully submitted,

PILLSBURY WINTHROP SHAW PITTMAN LLP



Anthony G. Smyth
Reg. No. 55,636
Tel. No. 650.233.4802
Fax No.

Date: October 6, 2006
2475 Hanover Street
Palo Alto, CA 94304-1114
(650) 233-4500